IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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CIVIL WRIT No. 7074 of 2006

MULARAM
V/S
VISHAWNATH & ANR.

Mr. SG OJHA, for the appellant / petitioner

MOHD. ASLAM for Mr. MANISH SHISHODIA, for the respondent

Date of Order : 20.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

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The petitioner by this petition seeks to challenge the orders dated 27.11.2006, Annex.3 and 3A, whereby the applications Annex.1 and 1A dated 22.7.2006 and 28.8.2006 respectively had been dismissed.

By order Annex.3A, the learned trial Court had dismissed the petitioner's application dated 22.7.2006, which was filed under Order 8 Rule 1(3) CPC, alleging that the agreement dated 29.3.83 and the attached plan have been got prepared by fraud, and deception, whereon the defendant has not put thumb mark, rather the thumb mark is forged one, which was got examined from expert, whose report dated 29.5.2006 has been received, which is admissible in

evidence. It was alleged that the comparison had been got conducted with the thumb mark appearing in the Vakalatnama and original affidavit, therefore, the report be taken on record.

The learned trial Court found that in the written-statement no specific plea has been taken, that the agreement does not bear thumb mark of the defendant, that the plaintiff's evidence is also over, way-back on 4.2.2005, and the case is going on for defendant's evidence. It has also been held, that the report has been got prepared by the defendant at his own level, and the report recites that detailed report can be given after an examination and comparison of the original disputed document, and preparation of the photo enlargement of the same, thus the report is not complete. It has also been noticed, that there are directions of the High Court to expeditiously decide the case. Inter-alia with this finding, the application has been dismissed.

In my view, the reasons given are just and proper, and do not require any interference, as admittedly the Court did not send the disputed and admitted thumb marks for examination by the handwriting expert, and the report, which is found to be incomplete report, if obtained by the defendant at his own level, it cannot be allowed to be produced as documentary evidence at this stage. Thus,

the order dated 27.11.2006 Annex.3A does not require any interference.

Coming to the order, Annex.3, the petitioner filed application on 28.8.2006, praying that the request of the petitioner to produce the handwriting expert was objected, on the ground that thumb mark should have been got compared with the specimen thumb marks, after obtaining them from the defendant, and therefore, it was prayed, that specimen thumb marks of the defendant be obtained, and be got examined. This application was opposed on the ground, that the thumb mark on the agreement is of defendant himself, which has been proved by the plaintiff, and the said expert report has been managed by manipulating, which has not been taken on record so far, and that plaintiff has got the thumb marks examined by another handwriting expert Anil Kumar Khutetiya, who has reported, vide report dated 31.8.2006, that the thumb marks on the agreement and affidavits etc. are of the same person, which report is there on record, and the photo enlargements alongwith the computer CD are being filed. Thus, it was prayed that the specimens cannot be sent for examination.

The learned trial Court has dismissed this application on the ground, that in the written-statement, the plea has been taken that the document has been fraudulently obtained, and it is not the plea that the

agreement does not bear his thumb mark, and that, none of the witnesses of the plaintiff had been cross-examined on these lines, about the thumb mark on agreement being forged, it is, for the first time, that the defendant had deposed that the thumb mark on agreement are not his. It has also been noticed, that the defendant had been filing applications after applications, and on 7.7.2006 last opportunity was granted to the defendant to lead evidence on costs, with the stipulation, that if evidence is not produced, the evidence shall be deemed to have been closed. Thereafter, 4 affidavits were filed, then further applications had been filed, which clearly show, that they have been filed only with an oblique motive of delaying the proceedings, therefore, application has been dismissed.

In my view, when the defendant has not pleaded in the written-statement that the thumb marks on the agreement are not his, nor has he cross-examined the plaintiff's witness on these lines, in such circumstances, there was no justification for asking the Court that the thumb mark be examined by the handwriting expert. Thus, this order also does not require any interference.

The net result is that the writ petition has no force and is dismissed summarily.

( N P GUPTA ),J.

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